

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CASE NO.: 1:18-cv-12374

LUXOTTICA GROUP S.p.A., an  
Italian corporation, and OAKLEY, Inc.,  
a Washington corporation,

Plaintiffs,

v.

SHUN HAO GIFT SHOP LLC, a  
Massachusetts limited liability company, and  
SHUN LU ZHANG, individually,

Defendants.

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**DEFENDANTS' ANSWER**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Defendants admit that Shun Hao Gift Shop LLC is a Massachusetts limited liability company that operates a retail business located at 1349 Hyde Park Ave., Hyde Park, MA 02136. Defendants deny the remainder of this allegation.
6. Admitted.
7. The Defendants lack sufficient information to admit or deny this allegation.
8. The Defendants lack sufficient information to admit or deny this allegation.

9. The Defendants lack sufficient information to admit or deny this allegation.
10. The Defendants lack sufficient information to admit or deny this allegation.
11. The Defendants lack sufficient information to admit or deny this allegation.
12. The Defendants lack sufficient information to admit or deny this allegation.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. The Defendants lack sufficient information to admit or deny this allegation.
18. Admitted.
19. Admitted.
20. The Defendants lack sufficient information to admit or deny this allegation.
21. The Defendants lack sufficient information to admit or deny this allegation.
22. Admitted.
23. Admitted.
24. Admitted.
25. Admitted.
26. Admitted.

27. The Defendants lack sufficient information to admit or deny this allegation.
28. The Defendants lack sufficient information to admit or deny whether Luxottica Group's investigator visited the Shun Hao Gift Shop on October 18, 2018. Defendants admit that the photograph enclosed in the Complaint appears to resemble the interior of the Shun Hao Gift Shop. Defendants deny the remainder of the allegations in this paragraph.
29. The Defendants lack sufficient information to admit or deny this allegation.
30. The Defendants lack sufficient information to admit or deny the conclusions of the Plaintiffs' investigator.
31. The Defendants deny that the products purchased by Plaintiffs' investigator were counterfeit. The Defendants admit that they do not have license, permission, or authority from Luxottica Group or Oakley to use Ray-Ban or Oakley Trademarks.
32. Denied.
33. Denied.
34. Denied.
35. Denied.
36. Denied.
37. Denied.
38. Denied.
39. Defendants deny that they knowingly, deliberately, or willfully disregarded any activities allegedly infringing Luxottica Group's and Oakley's Trademarks.

40. Defendants Shun Hao and Zhang repeat their answers set forth in Paragraphs 1-39 above.

41. Denied.

42. Denied.

43. Denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE – MISREPRESENTATION**

Plaintiffs have used their marks to misrepresent the source for the goods or services on or in connection with which the mark is used.

#### **SECOND AFFIRMATIVE DEFENSE – DESCRIPTIVE FAIR USE**

The complaint is barred in whole or in part on the grounds that Shun Hao and Zhang have in good faith made fair use of the descriptive terms “Ray-Ban” and “Oakleys” other than as trademarks.

#### **THIRD AFFIRMATIVE DEFENSE – FUNCTIONALITY**

The Complaint is barred in whole or in part on the grounds that the alleged marks serve a functional purpose beyond the designation of goods in commerce.

#### **FOURTH AFFIRMATIVE DEFENSE – LACHES**

Luxottica’s and Oakley’s unreasonable delay in challenging the alleged infringement is prejudicial to Shun Hao and Zhang and, as a result, the Plaintiffs’ claims are barred, in whole or in part, under the equitable doctrine of laches.

#### **FIFTH AFFIRMATIVE DEFENSE – FAILURE TO STATE A CLAIM**

The Complaint should be dismissed for failure to state a claim for which relief may be granted.

**SIXTH AFFIRMATIVE DEFENSE – WAIVER**

The Complaint is barred under the doctrine of waiver.

WHEREFORE, the Defendants, Shun Hao Gift Shop, LLC and Shun Lu Zhang, respectfully request that the Court enter judgment as follows:

- A. Dismissing Plaintiffs' claims with prejudice;
- B. Granting Defendants such other and further relief as the Court may deem just and proper.

Date: December 21, 2018

Respectfully submitted,

SHUN HAO GIFT SHOP, LLC  
and SHUN LU ZHANG  
By their attorney,

/s/ Russell L. Chin  
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**CERTIFICATE OF SERVICE**

I, Russell L. Chin, attorney for the Defendants, hereby certify that the foregoing Answer was sent via first class mail and electronic mail to Plaintiffs' counsel, Daniel N. Smith, at New England Patent & Trademark, 301 Edgewater Place, Suite 100, Wakefield, MA 01880, smith@patentstrademarklaw.com.

Date: December 21, 2018

/s/ Russell L. Chin  
Russell L. Chin  
Attorney for Defendants